



House of Representatives

General Assembly

File No. 195

February Session, 2008

Substitute House Bill No. 5113

House of Representatives, March 26, 2008

The Committee on General Law reported through REP. STONE of the 9th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING PROFESSIONAL EMPLOYER ORGANIZATIONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2008*) As used in this section
2 and sections 2 to 6, inclusive, of this act:

3 (1) "Client" means any person who, as an employer, enters into a
4 professional employer agreement with a professional employer
5 organization;

6 (2) "Coemployment relationship" means an ongoing relationship,
7 rather than a temporary or project-specific relationship, in which the
8 rights, duties and obligations of an employer are allocated between a
9 professional employer organization and a client pursuant to a
10 professional employer agreement as provided in sections 2 to 6,
11 inclusive, of this act;

12 (3) "Covered employee" means an individual who (A) is an

13 employee of a client that has a coemployment relationship with a
14 professional employer organization, (B) has received written notice of
15 the coemployment, and (C) has received a written summary of the
16 obligations and responsibilities of the client and the professional
17 employer organization pursuant to the professional employer
18 agreement;

19 (4) "Department" means the Labor Department;

20 (5) "Commissioner" means the Labor Commissioner;

21 (6) "Professional employer organization group" means two or more
22 professional employer organizations that are majority-owned or
23 commonly-controlled by the same entity, parent entity or controlling
24 persons;

25 (7) "Professional employer agreement" means a written contract by
26 and between a client and a professional employer organization;

27 (8) "Professional employer organization" means any person engaged
28 in the business of providing professional employer services, regardless
29 of whether such person uses the term or conducts business as a
30 professional employer organization, staff leasing company, registered
31 staff leasing company, employee leasing company, administrative
32 employer or any other name. Professional employer organization does
33 not include:

34 (A) Arrangements in which a person, other than a person whose
35 principal business activity is entering into professional employer
36 arrangements, shares employees with a commonly-owned company
37 within the meaning of Sections 414(b) and (c) of the Internal Revenue
38 Code of 1986, or any subsequent corresponding internal revenue code
39 of the United States, as from time to time amended;

40 (B) Independent contractor arrangements in which a person
41 assumes responsibility for the product produced or service performed
42 by such person or such person's agents and retains and exercises
43 primary direction and control over the work performed by the

44 individuals whose services are supplied under such arrangements; or

45 (C) Temporary help services that recruit, hire and solely set the
46 compensation of their employees, assign employees to work for an
47 organization as temporary, seasonal or special project employees and
48 reassign employees to other employers at the end of an assignment;

49 (9) "Professional employer services" means entering into
50 coemployment relationships in which all or a majority of the
51 employees providing services to a client or to a division or work unit
52 of a client are covered employees; and

53 (10) "Registrant" means a professional employer organization
54 registered under section 3 of this act.

55 Sec. 2. (NEW) (*Effective January 1, 2009*) (a) Nothing in this section or
56 sections 3 to 6, inclusive, of this act or in any professional employer
57 agreement shall:

58 (1) Diminish existing rights between covered employees and a client
59 existing prior to the effective date of the professional employer
60 agreement; or

61 (2) Create any new or additional enforceable right of a covered
62 employee against a professional employer organization that is not
63 specifically provided by the professional employer agreement or in
64 this section or sections 3 to 6, inclusive, of this act.

65 (b) (1) A covered employee who is required to be licensed,
66 registered or certified under any provision of the general statutes shall
67 be deemed to be solely an employee of the client for purposes of any
68 such license, registration or certification requirement.

69 (2) A professional employer organization shall not be deemed to
70 engage in any occupation, trade, profession or other activity that is
71 subject to licensing, registration or certification requirements or is
72 otherwise regulated by a governmental entity solely by entering into
73 and maintaining a coemployment relationship.

74 (c) For purposes of determination of tax credits and other economic
75 incentives provided by this state or other governmental entity and
76 based on employment, covered employees of the client shall be
77 deemed employees solely of the client.

78 (d) A client company's status or certification as a small, minority-
79 owned, disadvantaged or woman-owned business enterprise or as a
80 historically underutilized business shall not be affected by the client
81 company entering into an agreement with a professional employer
82 organization or using the services of a professional employer
83 organization.

84 Sec. 3. (NEW) (*Effective January 1, 2009*) (a) Subject to the provisions
85 of subsection (c) of this section, no person shall provide, advertise or
86 otherwise hold itself out as providing professional employer services
87 in this state unless such person is registered as a professional employer
88 organization. Any person seeking initial registration as a professional
89 employer organization shall apply to the Labor Commissioner on a
90 form prescribed by the commissioner. Such application shall include:

91 (1) The name or names under which the applicant will conduct
92 business or under which the applicant conducted business prior to
93 January 1, 2009;

94 (2) The address of the principle place of business of the applicant
95 and the address of each office it maintains or will maintain in this state;

96 (3) The applicant's taxpayer or employer identification number;

97 (4) A list by jurisdiction of any name under which the applicant
98 operated in the five years preceding the date of application, including
99 any alternative names, names of predecessors and, if known, successor
100 business entities;

101 (5) A statement of ownership, that includes the name and evidence
102 of the business experience of any person that, individually or acting in
103 concert with one or more other persons, owns or controls or will
104 control, directly or indirectly, twenty-five per cent or more of the

105 equity interest of the applicant;

106 (6) A statement of management that includes the name and
107 evidence of the business experience of any person who serves or will
108 serve as president, chief executive officer or otherwise has or will have
109 the authority to act as senior executive officer of the applicant; and

110 (7) A financial statement setting forth the financial condition of the
111 applicant in accordance with this subdivision.

112 (A) Except as provided in subparagraph (B) of this subdivision, a
113 professional employer organization or professional employer
114 organization group that conducts business prior to January 1, 2009,
115 shall submit the most recent audit of the professional employer
116 organization or professional employer organization group that was
117 conducted no earlier than thirteen months prior to the date of
118 application.

119 (B) If an applicant has not had sufficient operating history to have
120 audited financial statements based on at least twelve months of
121 operating history, the applicant shall meet the financial capacity
122 requirements specified in section 4 of this act and submit financial
123 statements reviewed by a certified public accountant.

124 (C) All information obtained from a professional employer
125 organization or professional employer organization group under this
126 subdivision shall be confidential and shall not be published or open to
127 inspection, except as otherwise required by law.

128 (b) (1) Each professional employer organization operating within
129 this state on January 1, 2009, shall complete its initial registration not
130 later than June 1, 2009. Such initial registration shall be valid until the
131 end of the professional employer organization's first fiscal year end
132 that is subsequent to January 1, 2011.

133 (2) Each professional employer organization not operating within
134 this state as of January 1, 2009, shall complete its initial registration
135 prior to commencement of operations within this state.

136 (c) A registered professional employer organization may apply for
137 renewal of its registration annually by submitting to the commissioner,
138 not later than one hundred eighty days after the end of the
139 professional employer organization's or professional employer
140 organization group's fiscal year, (1) an audit for the preceding fiscal
141 year, and (2) notice of any changes in the information provided in such
142 registrant's immediately preceding application for initial registration
143 or renewal. An applicant may apply for an extension with the
144 department, but any such request shall be accompanied by a letter
145 from the auditor stating the reasons for the delay and the anticipated
146 audit completion date. The financial statement shall be prepared in
147 accordance with generally accepted accounting principles and audited
148 by an independent certified public accountant licensed to practice in
149 the jurisdiction in which such accountant is located, and shall be
150 without qualification as to any increase in concern status of the
151 professional employer organization.

152 (d) Professional employer organizations in a professional employer
153 organization group may satisfy the reporting and financial
154 requirements of this section and section 4 of this act on a combined or
155 consolidated basis provided each member of the professional
156 employer organization group guarantees the obligations under
157 sections 2 to 6, inclusive, of this act of each other member of the
158 professional employer organization group. In the case of a professional
159 employer organization group that submits a combined or consolidated
160 audited financial statement, including entities that are not professional
161 employer organizations or that are not in the professional employer
162 organization group, the controlling entity of the professional employer
163 organization group under the consolidated or combined statement
164 shall guarantee the obligations of the professional employer
165 organization in the professional employer organization group.

166 (e) The commissioner may issue a professional employer
167 organization a limited registration if such professional employer
168 organization provides evidence, on a form prescribed by the
169 commissioner, that it:

170 (1) Is domiciled outside this state and is licensed or registered as a
171 professional employer organization in another state;

172 (2) Does not maintain an office in this state or directly solicit clients
173 located or domiciled within this state; and

174 (3) Does not have more than fifty covered employees employed or
175 domiciled in this state at any particular time.

176 (f) The department shall maintain a list of professional employer
177 organizations registered under this section.

178 (g) No registration fee charged pursuant to this section shall exceed
179 the amount reasonably necessary for the administration of this section
180 and sections 4 to 6, inclusive, of this act provided an initial registration
181 fee shall not exceed one thousand five hundred dollars and a renewal
182 fee shall not exceed one thousand dollars.

183 Sec. 4. (NEW) (*Effective January 1, 2009*) (a) Except as provided in
184 subsection (b) of this section or section 3 of this act, each professional
185 employer organization or, collectively, each professional employer
186 organization group shall:

187 (1) Maintain a minimum of one hundred fifty thousand dollars in
188 working capital, as defined by generally accepted accounting
189 principles, as reflected in the financial statements submitted to the
190 department with the initial registration and each annual renewal. A
191 professional employer organization or professional employer
192 organization group with less than one hundred fifty thousand dollars
193 in working capital at renewal shall have one hundred eighty days to
194 eliminate the deficiency. During such one hundred eighty days, the
195 professional employer organization or professional employer
196 organization group shall submit quarterly financial statements to the
197 department accompanied by the attestation of the chief executive
198 officer that all wages, taxes, workers' compensation premiums and
199 employee benefits have been paid by the professional employer
200 organization or members of the professional employer organization

201 group; or

202 (2) Provide a bond, irrevocable letter of credit or securities with a
203 minimum market value of one hundred fifty thousand dollars to the
204 department. Such bond shall be held by a depository designated by the
205 commissioner securing payment by the professional employer
206 organization of all taxes, wages, benefits or other entitlement due to or
207 with respect to covered employees, if the professional employer
208 organization does not make such payments when due. For any
209 professional employer organization or professional employer
210 organization group whose annual financial statements do not indicate
211 positive working capital, the amount of the bond shall be one hundred
212 thousand dollars plus an amount sufficient to cover the deficit in
213 working capital.

214 (b) The commissioner may accept an affidavit or certification of a
215 bonded, independent and qualified assurance organization approved
216 by the commissioner to certify qualifications of a professional
217 employer organization in lieu of the requirements of this section.

218 (c) The provisions of subsections (a) and (b) of this section shall not
219 apply to a professional employer organization that has been issued a
220 limited registration under subsection (e) of section 3 of this act.

221 Sec. 5. (NEW) (*Effective January 1, 2009*) (a) Except as specifically
222 provided in sections 2 to 6, inclusive, of this act, the allocation of
223 rights, duties and obligations of a professional employer organization
224 and a client shall be determined by the professional employer
225 agreement.

226 (b) Each professional employer agreement shall:

227 (1) Provide for the (A) allocation of employer rights and obligations
228 between the clients and the professional employer organization with
229 respect to the covered employees, and (B) professional employer
230 organization and the client to assume the responsibilities required by
231 sections 2 to 6, inclusive, of this act; and

232 (2) Require the professional employer organization (A) to pay
233 wages to covered employees, (B) to withhold, collect, report and remit
234 payroll-related and unemployment taxes, and (C) to the extent the
235 professional employer organization has assumed responsibility in the
236 professional employer agreement, to make payment or employee
237 benefits for covered employees.

238 (c) Except as otherwise expressly provided in the applicable
239 professional employer agreement:

240 (1) A client shall be solely responsible for the quality, adequacy or
241 safety of the goods or services produced or sold in the client's business;

242 (2) A client shall be solely responsible for directing, supervising,
243 training and controlling the work of covered employees with respect to
244 the business activities of the client and solely responsible for the act,
245 errors or omissions of covered employees with regard to such
246 activities;

247 (3) A client shall not be liable for the acts, errors or omissions of a
248 professional employer organization or of any covered employee of the
249 client when such covered employee is acting under the express
250 direction and control of the professional employer organization;

251 (4) A professional employer organization shall not be liable for the
252 acts, errors or omissions of a client or of any covered employee of the
253 client when such covered employee is acting under the express
254 direction and control of the client; and

255 (5) A covered employee is not, solely as the result of being a covered
256 employee of a professional employer organization, an employee of the
257 professional employer organization for purposes of general liability
258 insurance, fidelity bonds, surety bonds, employer's liability which is
259 not covered by workers' compensation and employer's liability
260 insurance carried by the professional employer organization unless the
261 covered employee is included by specific reference in the professional
262 employer agreement and applicable prearranged employment

263 contract, insurance contract or bond.

264 Sec. 6. (NEW) (*Effective January 1, 2009*) (a) An applicant for
265 registration or a registered professional employer organization or
266 controlling person of an applicant or a registered professional
267 employer organization shall be subject to disciplinary action pursuant
268 to subsection (b) of this section, if such applicant registrant or
269 controlling person:

270 (1) Wilfully violates any provision of sections 2 to 5, inclusive, of
271 this act;

272 (2) Is convicted of a crime that relates to (A) the operation of a
273 professional employer organization, (B) fraud or deceit, or (C) the
274 ability of the professional employer organization or a controlling
275 person of a professional employer organization to operate a
276 professional employer organization; or

277 (3) Knowingly makes a material misrepresentation to the
278 department or other governmental agency.

279 (b) Upon finding, after notice and opportunity for hearing, that an
280 applicant for registration or a registered professional employer
281 organization or a controlling person of an applicant or registered
282 professional employer organization violated one or more provisions of
283 subsection (a) of this section, the commissioner may:

284 (1) Deny any application for registration;

285 (2) Revoke, restrict or refuse to renew a registration;

286 (3) Impose an administrative penalty in an amount not to exceed
287 one thousand dollars for each material violation;

288 (4) Place the professional employer organization or controlling
289 person of a professional employer organization on probation for a
290 period to be determined by the commissioner, subject to reasonable
291 conditions specified by the commissioner; or

292 (5) Issue a cease and desist order.

293 Sec. 7. (NEW) (*Effective July 1, 2008*) Nothing in sections 1 to 6,
 294 inclusive, of this act shall be construed as affecting any provisions
 295 within title 31 of the general statutes, or any regulations or policies
 296 adopted by the Labor Department, including, but not limited to, such
 297 provisions, regulations or policies relating to determinations of the
 298 employer-employee relationship.

299 Sec. 8. (NEW) (*Effective from passage*) On or before January 1, 2009,
 300 the commissioner shall adopt regulations, in accordance with chapter
 301 54 of the general statutes, to implement and administer sections 1 to 6,
 302 inclusive, of this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2008</i>	New section
Sec. 2	<i>January 1, 2009</i>	New section
Sec. 3	<i>January 1, 2009</i>	New section
Sec. 4	<i>January 1, 2009</i>	New section
Sec. 5	<i>January 1, 2009</i>	New section
Sec. 6	<i>January 1, 2009</i>	New section
Sec. 7	<i>July 1, 2008</i>	New section
Sec. 8	<i>from passage</i>	New section

Statement of Legislative Commissioners:

In subsection (b) of section 3, the dates were adjusted for clarity, consistency and to effectuate the intent of the committee.

LAB Joint Favorable C/R

GL

GL Joint Favorable Subst.-LCO

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note**State Impact:**

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$
Labor Dept.	GF - Cost/Revenue Gain	Less than \$100,000	Less than \$100,000

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill requires professional employer organizations to register with the Department of Labor (DOL). This would result in additional personnel and administrative costs between \$75,000 and \$100,000 associated with personnel to register, renew, and review applications and financial documents.

The bill imposes registration fees not to exceed the amount reasonably necessary for the administration of the registration and renewal process. The initial registration fee would not exceed \$1,500 and a renewal fee would not exceed \$1,000. The revenue generated from this fee is unknown, but is not anticipated to be significant.

The bill could also result in a revenue gain associated with administrative penalties not to exceed \$1,000 for each material violation. The revenue generated from penalties is not anticipated to be significant.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation and the number of newly licensed registrants.

OLR Bill Analysis**HB 5113****AN ACT CONCERNING PROFESSIONAL EMPLOYER ORGANIZATIONS.****SUMMARY:**

This bill requires professional employer organizations (PEOs) to register with the Labor Department and creates standards for them, including financial capacity standards. It defines the organizations as businesses that provide employer services for their clients and have entered coemployment agreements with their client's employees. It sets application requirements, allows certain PEOs to meet its reporting and financial requirements as a group, and allows out-of-state organizations to obtain a limited registration.

The bill sets standards for the contracts between the organizations and their clients.

It prohibits the organizations from, among other things, committing willful violations of its provisions and authorizes the labor commissioner to discipline violators.

Finally, the bill states its relationship to other labor laws and laws creating certain economic development programs.

EFFECTIVE DATES: January 1, 2009, except for the definitions section, including the definition of a PEO, is effective on October 1, 2008; which the provision on the bill's relationship to state labor law, which is effective on July 1, 2008; and the provision requiring implementing regulations is effective on passage.

§§ 1 & 3 — REGISTRATION REQUIRED

The bill prohibits providing, advertising, or otherwise holding oneself out as providing professional employer services without being

registered as a PEO with the Labor Department.

It requires each PEO operating in this state on January 1, 2009 to register by June 1, 2009. This initial registration is valid until the end of its first fiscal year ending after January 1, 2011. It requires each PEO not operating in this state on January 1, 2009, to complete its initial registration before providing services.

The bill requires the Labor Department to (1) keep a list of registered PEOs and (2) develop forms necessary to promote the efficient administration of the registration requirements.

The bill prohibits (1) registration fees from being more than the amount reasonably necessary to administer its provisions, (2) the initial registration fee from being more than \$1,500, and (3) the renewal fee from being more than \$1,000.

It requires the commissioner to adopt implementing regulations by January 1, 2009.

Definitions

The bill defines a “professional employer organization” as any person engaged in the business of providing professional employer services, regardless of whether the person uses the term or conducts business as a PEO, staff leasing company, registered staff leasing company, employee leasing company, administrative employer, or any other name. Under the bill, “professional employer services” means entering into coemployment relationships in which all or a majority of the employees providing services to a client or to a division or work unit of a client are covered employees.

A “coemployment relationship” is an ongoing relationship in which the rights, duties, and obligations of an employer are allocated between a PEO and a client pursuant to a professional employer agreement. A “client” is any person who, as an employer, enters into a professional employer agreement with a PEO. A “covered employee” is an individual who (1) is an employee of a client that has a

coemployment relationship with a PEO, (2) has received written notice of the coemployment, and (3) has received a written summary of the obligations and responsibilities of the client and the PEO under a professional employer agreement.

Under the bill, a PEO does not include:

1. arrangements in which a person, other than a person whose principal business activity is entering into professional employer arrangements, shares employees with a commonly owned company within the meaning of Section 414(b) and (c) of the Internal Revenue Code;
2. independent contractor arrangements in which the contractor assumes responsibility for the product produced or service performed and retains and exercises primary direction and control over the work performed by the individuals whose services are supplied; or
3. temporary help services that recruit, hire, and solely set the compensation of their employees, assign employees to work for an organization as temporary, seasonal, or special project employees and reassign employees to other employers at the end of an assignment.

Initial Application Requirements

An application for an initial PEO registration must include:

1. the name or names under which the applicant will conduct or has conducted business before January 1, 2009;
2. the addresses of the business's principal office and each office in Connecticut;
3. the applicant's taxpayer or employer identification number;
4. a list by jurisdiction of any name under which the applicant operated in the five years before the application date, including

any alternative names, names of predecessors, and, if known, successor businesses;

5. a ownership statement that includes the name and business experience of any person that, individually or with others, owns, controls, or will control, directly or indirectly, 25% or more of the applicant's equity interests;
6. a management statement that includes the name and business experience of any person who serves or will serve as president, chief executive officer, or otherwise has or will have the authority to act as senior executive officer; and
7. a statement of the applicant's financial condition.

The bill requires each applicant engaged in the business of providing professional employer services before January 1, 2009 to submit its most recent audit, which must have been conducted within 13 months before the application date. If an applicant has not had sufficient operating history to have audited financial statements based on at least 12 months of operating history, the bill requires the applicant to meet the financial capacity requirements (specified below) and submit financial statements reviewed by a certified public accountant.

All information obtained from a PEO or PEO group under the bill is confidential and is not to be published or kept open to inspection, except as otherwise required by law.

Renewal Application

The bill requires registrations to be renewed annually. A PEO may apply for renewal by submitting, not later than 180 days after the end its fiscal year (1) an audit for the preceding fiscal year and (2) a notice of any changes from the information provided in its immediately preceding application. An applicant may apply for an extension with the department, but this request must be accompanied by a letter from its auditor stating the reasons for the delay and the anticipated audit

completion date. The financial statement must be:

1. prepared in accordance with generally accepted accounting principles,
2. audited by an independent and properly licensed certified public accountant, and
3. without qualification as to any increase in the ongoing concern status of the PEO.

§ 1 — PEO GROUPS

A “professional employer organization group” is two or more PEOs that are majority-owned or commonly controlled by the same entity, parent, or controlling persons. The bill allows PEOs in a PEO group to satisfy the bill’s reporting and financial requirements on a combined or consolidated basis if each of the member of the group guarantees the obligations under the bill of each other group members. In the case of a group that submits a combined or consolidated audited financial statement including entities that are not PEOs or that are not in the PEO group, the controlling entity of the PEO group must guarantee the obligations of the PEO in the group.

§ 3 — LIMITED REGISTRATION

The bill allows the labor commissioner to issue a limited registration to a PEO if it provides evidence that it:

1. is domiciled outside this state and is licensed or registered as a PEO in another state;
2. does not maintain an office or directly solicit clients located or domiciled within Connecticut; and
3. does not have more than 50 covered employees employed or domiciled in this state at any particular time.

§ 4 — FINANCIAL CAPACITY REQUIREMENTS

The bill requires PEOs or PEO groups to meet one of two financial

capacity standards. The first is to maintain a minimum of \$150,000 in working capital, as defined by generally accepted accounting principles, as reflected in the financial statements submitted to the department with the initial registration or annual renewal.

A registrant with less than \$150,000 in working capital at renewal has 180 days to attain the \$150,000. During the 180 days, the registrant must submit quarterly statements accompanied by the chief executive officer's attestation that all wages, taxes, workers' compensation premiums, and employee benefits have been paid.

The second way of demonstrating financial capacity is to provide a bond, irrevocable letter of credit, or securities to the Labor Department with a minimum value of \$150,000. The bond must be held by a depository designated by the commissioner, securing payment by the organization of all taxes, wages, benefits, or other entitlements due to or with respect to covered employees. For a registrant whose annual financial statements do not indicate positive working capital, the amount of a bond must be \$100,000 plus an amount sufficient to cover the deficit in working capital.

The bill authorizes the commissioner to accept an affidavit or certification of a bonded, independent, and qualified assurance organization approved by the commissioner certifying qualifications of a PEO in lieu of these requirements.

The bill exempts a PEO with a limited registration from the financial capacity requirements.

§ 5 — PROFESSIONAL EMPLOYER AGREEMENT

The bill requires PEOs and their clients to allocate their rights, duties, and obligations in an agreement and specifically requires the agreement to:

1. provide for the (a) allocation of employer rights and obligations between the client and the PEO with respect to the covered employees, and (b) PEO and the client to assume the

responsibilities required by the bill; and

2. require the PEO to (a) pay wages to covered employees; (b) withhold, collect, report, and remit payroll-related and unemployment taxes; and (c) make payments for employee benefits for covered employees to the extent the PEO has assumed the responsibility in the agreement.

Unless the agreement expressly states otherwise, the bill provides that:

1. a client is solely responsible for the quality, adequacy, or safety of the goods or services produced or sold by the client's business;
2. a client is solely responsible for directing, supervising, training, and controlling the covered employees' work with respect to the client's business activities and solely responsible for the acts, errors, or omissions of the covered employees with regard to such activities;
3. a client is not liable for the acts, errors, or omissions of a PEO or of any covered employee of the client when the covered employee is acting under the express direction and control of the PEO;
4. a PEO is not be liable for the acts, errors, or omissions of a client or its covered employees when they are acting under the client's express direction and control; and
5. a covered employee is not, solely as the result of being a covered employee of a PEO, an employee of the organization for purposes of general liability insurance, fidelity bonds, surety bonds, employer's liability that is not covered by workers' compensation, or employer's liability insurance carried by the PEO, unless the covered employee is included by specific reference in the agreement and applicable prearranged employment contract, insurance contract, or bond.

§ 2 — EXISTING AGREEMENTS

The bill provides that it does not, and professional employer agreements must not (1) diminish existing rights between covered employees and a client existing before the effective date of either the bill or the professional employer agreement or (2) create any new or additional enforceable right of a covered employee against a PEO that is not specifically provided by the professional employer agreement or the bill.

§ 6 — DISCIPLINE

The bill subjects PEOs and their controlling persons to discipline by the labor commissioner for:

1. wilfully violating the bill;
2. being convicted of a crime that relates to (a) the operation of a PEO, (b) fraud or deceit, or (c) the ability of the PEO or its controlling person to operate a PEO; or
3. knowingly making a material misrepresentation to the Labor Department or other governmental agency.

The bill authorizes the labor commissioner, after notice and opportunity for hearing, upon finding that a PEO or its controlling person has committed a prohibited act, to:

1. deny a registration application;
2. revoke, restrict, or refuse to renew a registration;
3. impose an administrative fine up to \$1,000 for each material violation;
4. place the PEO or its controlling person on probation for a period determined by the commissioner, subject to reasonable conditions he specifies; or
5. issue a cease and desist order.

§§ 2 & 7 — RELATIONSHIP TO EXISTING LAWS

The bill specifies that it must not be construed as affecting any provision of the state's labor laws, including provisions, regulations, or policies relating to determining the employer-employee relationship.

The bill specifies that a covered employee who must be licensed, registered, or certified under any provision of the general statutes must be deemed to be solely an employee of the client for credentialing purposes. Further, a PEO must not be deemed to engage in any occupation, trade, profession, or other activity subject to licensing, registration, or certification requirements, or otherwise regulated by a governmental entity, solely by entering into and maintaining a coemployment relationship.

For the purpose of determining tax credits and other economic incentives provided by this state or another government and based on employment, the bill deems the client's covered employees to be solely employees of the client.

Under the bill, a client's status or certification as a small, minority-owned, disadvantaged, or woman-owned business enterprise or as a historically underutilized business is not be affected by entering a professional employer agreement.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Change of Reference

Yea 11 Nay 0 (03/04/2008)

General Law Committee

Joint Favorable

Yea 18 Nay 0 (03/11/2008)